

The Provincial Resource Centre for the Visually Impaired (PRCVI)
British Columbia

Recommendations regarding
The Copyright Modernization Act (Bill C-32)
And
Alternate Formats for Students
with Perceptual Disabilities

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A. Context

Understanding the context for alternate format production and use is essential to dealing with the implications of the Copyright Modernization Act (Bill C-32). Only 5% of published materials in any alternate format are made available to people with perceptual disabilities. This means that there is a 95% gap for Canadians who need alternate formats to access published materials. Across Canada students with perceptual disabilities related to the use of print may have a visual impairment, blindness, learning disabilities, autism and/or physical disabilities that prevent them from using conventional print.

Production of alternate formats has changed significantly over the past decade. Most institutions now produce alternate formats through a wide range of generic and specialized digital technological processes. In addition to physical delivery of "hard" copies, modern delivery methods allow alternate format materials to be transmitted through telecommunications methods. Furthermore, controlled digital repositories have been developed to provide direct electronic access to users and producers of alternate formats. The Copyright Act must be modernized to recognize the changes in assistive technology and to accommodate the production, distribution methods and use of new technologies for people with perceptual disabilities.

The commercial sector has produced a minuscule number of audiobooks for purchase. Often commercial audiobooks are abridged versions and not the whole book. Many audiobooks contain technological protection measures (TPMs) that make them unusable with adaptive technology for students and teachers with perceptual disabilities. Responses to our requests for electronic files from publishers have varied from 2 days to over a month to deliver and have taken as long as 6 months. A few publishers have never responded to requests. This is unacceptable for students waiting for their textbooks or for teachers of students with visual impairments who require materials in a timely manner. Some E-books

are available commercially, but many titles can only be read with proprietary software and hardware that is not compatible with adaptive technology. Furthermore, students with disabilities who want to read current novels may need to wait much longer for access than their sighted counterparts by having popular reading books converted to useable alternate formats.

The production of alternate formats is expensive, ranging in cost for an accessible PDF version for as little as \$25 to a fully brailled Math book that can cost up to \$30,000. In Canadian educational institutions, production of alternate formats is almost always done at no charge to the user.

For the most part there are relatively few users for each title in a specific format in the educational sector. Students need a variety of formats including braille and large print as well as a range of accessible electronic texts to meet the needs of individual readers including audiobooks and DAISY (Digital Accessible Information System) books.

To maximize efficiencies and minimize costs, it is essential that alternate formats produced by one Canadian educational institution are shared through interlibrary loan with other trusted partners so that production costs are minimized. In Canada, the consortium arrangements that facilitates sharing amongst the education sector is the Canadian Association of Educational Resource Centres for Alternate Format Materials (CAER). Members of CAER agree to a common set of sharing protocols and business practices that ensure validation of users and responsible use of the materials in accordance with the Copyright Act.

B. Copyright Modernization Act

1. Improvements

The Copyright Modernization Act (Bill C-32) has made modest improvements to clarify and extend user rights relating to exceptions for people with perceptual disabilities:

a. The language in Section 32(1) has been amended to add an explicit, but still conditional, right for a "person with a perceptual disability, for a person acting at the request of such a person, or for a non-profit organization acting for the benefit of such a person to" make a copy of a work for the purpose of creating an alternate format." (See Excerpt of Section 32(1) in Appendix A).

According to common interpretation, what this means is that in Canada, permission is not required for the creation of alternate formats except for:

- large print,
- sign language and/or captioning for motion pictures, and
- material that is already commercially available

b. Bill C-32 provides a conditional exception to the prohibition of circumventing technological protection measures for the "sole purpose of making a work, a performer's performance fixed in a sound recording or a sound recording perceptible to the person with a perceptual disability." (S. 41.16(1)). (See Excerpt in Appendix B)

c. Sending copies of alternate formats outside Canada is permitted under specific conditions (S. 32.0.1.1)

d. There is a continued exemption from the Blank Audio Recording Media levy for societies, associations or corporations that represent persons with a perceptual disability. (S. 82).

2. Concerns

Despite these improvements, there are many clauses in the Bill that could significantly constrain or render Section 32 (1) inoperable:

a. The Act purports to be technologically neutral. However, it still does not provide a generic exception for all alternate format materials (now and

in the future) created for people with perceptual disabilities. For example in the educational environment, large print is custom-produced for specific users, sometimes at great expense. No producer should need to ask for permission to produce a large print textbook. It is common practice in Canadian schools to purchase a class set of textbooks for all the students in a given class. Only when a student's access needs requires large print and a large print version of the textbook is not available from the publisher will an alternate format producer like PRCVI consider initiating the process necessary to produce the textbook in large print. Furthermore, non-profit education organizations should not potentially be required to pay royalties or keep additional burdensome records solely for a copyright collective.

- b. The exception that permits circumvention of technological protection measures (TPMs) and the means to circumvent these measures for the purpose of producing alternate formats (Section 41.16(1)) may be largely nullified by the condition "to not unduly impair the technological protection measure." According to the Canadian Library Association there is no effective technical way to remove the TPMs and to restore them after an alternate format has been created. The TPMs would in all likelihood, interfere with the use of some, if not all, of the adaptive technologies used by students with perceptual disabilities to access educational materials.
- c. The prohibition to alter rights management information requires an exception for legitimate purposes. It is common practice and necessary to alter rights management information by adding a statement on the alternate format versions to show that it has been created under the provisions of the exceptions of the Canadian Copyright Act and that uses must be governed by provisions of the Act. There is also additional copyright information that needs to be added to identify the producers of the alternate format version. (See excerpt in Appendix C)
- d. While there has been an attempt to increase user rights for people with perceptual disabilities, it is unclear whether sections of the Bill that do not specify exceptions to alternate formats will in fact "trump" or nullify any gains made in Section 32(1), the major user right for people with perceptual disabilities. The main point is to "do no harm" to access already available to users or additional access rights proposed in the Bill. Potentially relevant sections that are silent on exceptions for people with perceptual disabilities could have unintended consequences that make it even more difficult for this already disadvantaged group of Canadians to

access alternate formats.

For example the section on interlibrary loan (30.2.(5)) makes no sense for libraries that share alternate format resources. In fact it potentially contradicts the section on Research or Private Study and Section 32 (1) rights for people with perceptual disabilities. It further clouds the issue on "Sending Copies Outside Canada." Destruction of digital copies after 30 days and the 5 day limitation on digital copies is not feasible or reasonable for people with perceptual disabilities. In an educational setting this requirement for destruction is completely unworkable.

3. Summary

While the Bill has some limited new rights for people with perceptual disabilities and their production partners, it falls short of modern requirements. It is not technologically neutral; it also does not modernize rights regarding alternate formats for people with perceptual disabilities; and it does not update the language and definitions to be inclusive.

The Bill adds unnecessary and potentially very troublesome burdens for PRCVI and other education producers of alternate format materials in Canada. These include unrealistic technological protection measures, counter-productive interlibrary loans restrictions, and possible new costs for royalties and reporting. Sections outside the 32.1 exceptions have a potential to nullify any gains for people with perceptual disabilities. The Bill does not address the current reality for users with disabilities and their production partners that specialize in alternate formats and adaptive technology. Furthermore it does not anticipate emerging technology for transcriptions, adaptations, and distribution that may be used in the future to equalize access for people with perceptual disabilities.

4. Recommendations

- a. Rewrite section 32.1 to be completely technology and format neutral. The following is suggested:

"It is not an infringement of copyright for a person with a perceptual disability, for a person acting at the request of such a person, or for a non-profit organization acting for the benefit of such a person, to make a copy of a work or sound recording in another format suitable for persons with a perceptual disability provided that the item is not commercially available

in the appropriate format.”

- b. Remove all references to restoration of technological protection measures for legitimate means.
- c. Permit rights management information to be altered to recognize the copyright ownership of alternate format producers.
- d. Clarify the jurisdiction, royalties and reporting requirements for alternate formats related to Collective Societies.
- e. Remove the restrictions, royalties and regulations on sending copies of alternate formats outside Canada. Arrange for reciprocal agreements.
- f. Ensure that interlibrary loan and resource sharing has no restrictions for people with perceptual disabilities or agencies working on their behalf.

Sources

Bill C-32, An Act to Amend the Copyright Act. 40th Parliament. 3rd session, 2010. <<http://www2.parl.gc.ca/HousePublications/>>

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<http://www.cla.ca>

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Appendix A

Excerpt from Bill C-32

Section 32.(1)

“It is not an infringement of copyright for a person with a perceptual disability, for a person acting at the request of such a person, or for a non-profit organization acting for the benefit of such a person, to

- (a) make a copy or sound recording of a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;
- (b) translate, adapt or reproduce in sign language a literary or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability; or
- (c) perform in public a literary or dramatic work, other than a cinematographic work, in sign language, either live or in a format specially designed for persons with a perceptual disability.

Subsection (1) does not authorize the making of a large print book.

Subsection (1) does not apply where the work or sound recording is commercially available in a format specially designed to meet the needs of any person referred to in that subsection, within the meaning of paragraph (a) of the definition “commercially available”.

Appendix B

Excerpt from Bill C-32

Technological Protection Measures Prohibition Section 41

No person shall (a) circumvent a technological protection measure of paragraph (a) of the definition “technological protection measure” in section 41;

(b) offer services to the public or provide services.....”;

(c) manufacture, import, distribute, offer for sale or rental or provide—including selling or renting—any technology device or component...”.....

41 (1) Persons with perceptual disabilities

“Paragraph 41.1(1)(a) does not apply to a person with a perceptual disability, another person acting at their request of a nonprofit organization acting for their benefit if that person or organization circumvents a technological protection measure for the sole purpose of making a work, a performer's performance fixed in a sound recording or a sound recording perceptible to the person with a perceptual disability.

Paragraphs 41.1(1)(b) and(c) do not apply to a person who offers or provides services to persons or organizations referred to in subsection (1), or manufactures, imports or provides a technology, device or component for the purposes of enabling those persons or organizations to circumvent a technological protection measure in accordance with that subsection, to the extent that the services, technology, device or component do not unduly impair the technological protection measure.”

Appendix C

Excerpt from Bill C-32

41.22 (1) Prohibition – rights management information

“No person shall knowingly remove or alter any rights management information in electronic form without the consent of the owner of the copyright in the work, the performer’s performance or the sound recording, if the person knows or should have known that the removal or alteration will facilitate or conceal any infringement of the owner's copyright or adversely affect the owner's right to remuneration under section 19.”

41.22 (2) Removal or alteration of rights management information

“The owner of the copyright in a work, a performer's performance fixed in a sound recording or a sounding recording is, subject to this Act, entitled to all remedies—by way of injunction, damages, accounts, delivery up and otherwise—that are or may be conferred by law for the infringement of copyright against a person who contravenes subsection (1).”

41.22 (4) Definition of “rights management information”

In this section “rights management information” means information that

(a) is attached to or embodied in a copy of a work, a performer's performance fixed in a sound recording or a sound recording, or appears in connection with its communication to the public by telecommunication; and

(b) identifies or permits the identification of the work or its author, the performance or its performer, the sound recording of its maker or the holder of any rights in the work, the performance or the sound recording, or concerns the terms or conditions of the work's, performance's or sound recording's use. “